IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 78-223
	)	
RAYMOND JAMES,	)	O R D E R
	)	
Defendant.	)	

On January 19, 1981, defendant filed motion pursuant to Rule 35 to modify his sentence. Thereafter, on July 7, 1981, this motion was denied by Judge Robert C. Belloni. Mr. James claims that he did not receive a copy of the order of July 7, 1981, denying his motion. Mr. James also claims, by letter dated November 4, 1981, to me , that Judge Belloni was prejudiced against him.

Without undertaking to evaluate the validity of Mr. James' assertions against Judge Belloni I grant Mr. James' motion for leave to file an out of time appeal as to the order dated July 7, 1981. This motion was filed September 28, 1981. Accordingly,

It is O R D E R E D that the motion for leave to file a late appeal challenging the order denying the motion to modify the sentence is hereby granted. The Clerk is authorized and directed to file on behalf of Mr. James an appeal of the July 7, 1981, order.

DATED this 9th day of December, 1981.

JAMES M. BURNS
Chief U.S. District Judge

FILE

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APR 19 1982
U.S. ATTORNEY
PORTLAND, ORE.

April 13, 1982

Honorable Eugene A. Wright
United States Circuit Judge
United States Courthouse
1010 5th Avenue
Seattle, WA 98104

Re: United States of America vs. Raymond Edward James,
No. 81-1772, DCF CR 76-223-1-RCB (Oregon/Portland)

Dear Judge Wright:

Once again this frustrated pro se appellant has been shafted by this Court in a manner which defies logic! In the Order of you and Judge Schroeder of April 5, 1982, you have, in essence, re-written Rule 35, Federal Rules of Criminal Procedure, by depriving this appellant his fundamental right to consideration of a timely Rule 35 motion by his sentencing Judge.

If you would get your head out of the sand long enough to listen to some good old common logic, perhaps you could tell me just how I might appeal an order I never received a copy of, which is exactly what happened in this instance?

While in all probability Judge Belloni did deny my Rule 35 motion on July 7, 1981, and while Mr. Robert Christ, District Court Clerk, assures us his deputy clerk followed notification procedures, he cannot assure her independent recollection of the actual mailing of the copies of the Rule 35 denial in this instance. And the fact remains that appellant never received his copy of the denial order until late September!

This case is almost four years old and the record will reflect that this appellant has always strived to be prompt and timely in filing his motions to this Court (and the District Court). But I CANNOT file a timely appeal when a deputy clerk fails to apprise me of the fact that it has been denied! I consider it horrendous that I am to be penalized for the failure of some deputy clerk to mail me my copy of a denial order. This is a gross miscarriage of justice.

Honorable Eugene A. Wright
April 13, 1982

But now I wish to apprise the Court what I construe to be the real reason for dismissing No. 81-1772, ostensibly for lack of jurisdiction. I am firmly convinced that this technicality has been contrived as a ploy to avoid compelling your Ninth Circuit brother, Judge Skopil, to hear my initial Rule 35 motion (as should have been done from the outset). But I do not feel Judge Skopil has had any part of this contrivance. I hold Judge Skopil in the highest respect as an able and just jurist. Unfortunately, I cannot say the same for many of his brothers and sisters on the Ninth Circuit!

Inasmuch as I continue to be an in forma pauperis and pro se litigant I wish this letter to be construed as a motion to re-open No. 81-1772 and reconsolidate ir for consideration with No. 81-1802. To do anything less would be to deprive this appellant of his constitutional rights to due process of law and equal protection of the laws and Federal Rules of Criminal Procedure.

Respectfully yours,

Raymond E. James
#35259-136 (Duke Unit)
Federal Correctional Institution
P. O. Box # 1000
Butner, NC 27509

cc: files
Hon. Mary M. Schroeder
Hon. James R. Browning
Hon. Otto R. Skopil, Jr.
Hon. James M. Burns
Hon. Robert C. Belloni
Mr. Charles H. Turner, Esquire, AUSA

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MAY 03 1982
U.S. ATTORNEY
PORTLAND, ORE.

FILED
APR 29 1982
PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. RAYMOND EDWARD JAMES, Defendant-Appellant.	No. 81-1772 DC# CR 78-223-1-RCB Oregon (Portland) ORDER

Before: WRIGHT and SCHROEDER, Circuit Judges

Appellant's letter dated April 13, 1982, is construed as a motion for reconsideration of the Court's order of April 9, 1982. The motion is denied. This Court is without power to extend the time for filing a notice of appeal, and the district court was likewise unable to do so because appellant's motion for extension of time was not filed within the "grace period" allowed by Fed. R. App. P. 4.

The Court notes, however, that successive motions under Rule 35 may be filed. See Heflin v. United States, 358 U.S. 415, 418 n.7 (1959). Appellant may perfect an appeal from denial of such a motion.

4/22/82SP
(CR CAL 4/5/82)